

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11573-2015 (O&M)
Date of decision: 03.07.2019

Ram Kala DeviPetitioner
Versus
Union of India & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.S.S.Khurana, Advocate, for the petitioner.

Ms.Anita Balyan, Advocate, for the respondent-UOI.

G.S. SANDHAWALIA, J. (Oral)

CM-9289-CWP-2019

Application for placing on record certified copy of the plaint as Annexure P-11, is allowed, in view of the averments made in the application, duly supported by affidavit. Said document is taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

CWP-11573-2015

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 27.02.2015 (Annexure P-10) whereby the claim of the petitioner for family pension has been rejected.

The reason for rejection is on account of the fact that the husband of the petitioner, namely, Singh Ram had disappeared on account of his own volition as he was accused of murder of the son of the petitioner and his own son also, for which FIR dated 03.06.2001, under Section 302 IPC, was registered and he was declared 'Proclaimed Offender'. The judgment whereby the husband had been declared dead on account of being

missing for the last 7 years dated 26.08.2013 (Annexure P-4) was discarded on the ground that the Court had not mentioned these facts. Resultantly, the proceedings for family pension, in a manner, were postponed on the ground that as and when the husband would be acquitted from the said charge, petitioner's case would be reconsidered and a fresh application may be submitted. Reliance was placed upon circular dated 03.03.1989 that where an official would disappear after committing frauds, the family pension would be sanctioned only when the Government employee is acquitted by the Court of law. The note reads as under:

“Note:- The above orders regulate genuine cases of disappearance under normal circumstances and not the cases in which officials disappear after committing frauds, etc. In latter type of cases the family pension needs to be sanctioned only on the government employee being acquitted by the court of law or after the conclusion of the disciplinary proceedings, etc. as the case may be.

[G.I., Dept. of Posts, Circular Letter No.4-52/86-Pen, dated the 3rd March, 1989.]”

Rule 8 of the Central Civil Services Pension Rules, 1972 was also relied upon, which talks about the pension rules for future good conduct.

Counsel for the petitioner has, accordingly, argued that the petitioner is aggrieved on 2 accounts, firstly, the husband, as such, has committed the murder of their only son. Secondly, on account of him allegedly absconding and having been declared Proclaimed Offender, she has been denied the benefit of family pension. It is, accordingly, argued

that the petitioner's right for family pension cannot be curtailed on account of the misconduct of the husband, as such and even otherwise, there is a presumption that he has died, which is further fortified from the Civil Court decree dated 26.08.2013 (Annexure P-4). The entitlement for payment of family pension would be from the date the husband went missing. It is further submitted that the petitioner cannot be said to be a beneficiary of the misconduct of the husband and therefore, the above note, as such, would not be applicable in the present facts and circumstances.

Counsel for Union of India has, however, opposed the said arguments on the ground that pension is not a matter of right and the Government employee has to maintain good conduct thereafter also. In such circumstances, once there was an FIR under Section 302 IPC, lodged against the husband and he went absconding, the petitioner was not entitled for the family pension. Reliance has also been placed upon the earlier orders passed by this Court on 18.03.2009 (Annexure P-3) whereby denial had been made on earlier occasions, i.e., 12.11.2008 (Annexure P-1) and 11.02.2009 (Annexure P-2), rejecting the family pension, at that point of time and the writ petition had been dismissed.

A perusal of the record would go on to show that the husband of the petitioner voluntarily retired from BSF on 15.06.1993 from the post of Naik from the 102 Battalion, BSF and was allotted PP Number for withdrawal of his pension from the State Bank of India, Rewari Branch, through Bank Account No.10575939337. FIR was

registered on 03.06.2001, as noticed above and thereafter, the petitioner had submitted her claim which was rejected vide the above two orders, which were subject matter of challenge before this Court. This Court, at that stage, came to the conclusion that there could be no presumption that the husband had died if he was absconding and it was a conscious act of Singh Ram. It was, accordingly, held that the denial of pension is in view of the rules cited in the said impugned orders, at that point of time. It was also noticed that the petitioner was the informant of the said FIR. Relevant portion of the judgment read as under:

“It transpires that Singh Ram was serving in BSF, however, sought voluntary retirement on 15.6.1993. It seems that Singh Ram murdered his son. FIR No.110 dated 3.6.2001 has been lodged under Section 302 IPC with Police Station, Khol, District Rewari on the statement of the petitioner. After committing murder, Singh Ram absconded from the process of law and finally had to be declared Proclaimed Offender. The Trial Court has consigned the file to record room, to be restored as and when Singh Ram surrenders or is arrested by the police CWP No.4132 of 2009 [3] and produced in Court. It is thus clear that it is not a case of missing person, rather a case of intentional and conscious act of Singh Ram of absconding from the process of law after committing a serious crime such as murder of his own son. Singh Ram was required to be tried by Court of law, however, he absconded and had been declared Proclaimed Offender and the file has been consigned to the record room. The denial of pension to the petitioner is in view of the rules cited in the orders.

Learned counsel for the petitioner has not been able to justify the stand of the petitioner in asking for pension in such circumstances.

I am of the opinion that since it is a conscious act of

Singh Ram of absconding from the process of law, therefore, he cannot be declared presumed dead.

The petition is dismissed.”

The petitioner, thereafter, filed a Civil Suit on 18.08.2011 (Annexure P-11) which was eventually decided on 26.08.2013 (Annexure P-4). A perusal of the judgment would go on to show that it was brought to the notice of the Court that the FIR bearing No.118 of 2001 had been lodged as it was exhibited as P2 including the application regarding family pension (Ex.P6). The plaintiff examined as many as 4 witnesses including herself and that the husband had not been seen by anybody or by his relatives, anywhere in India and he had not returned to the village or the locality. Resultantly, the Civil Court that declared him dead and the plaintiff being his Class-I legal heir, had succeeded to his property and service benefits. Relevant portion of the judgment read as under:

“5. In order to prove his case plaintiff got examined Rajesh Kumar as PW1, Muni Ram as PW2, Sarita as PW3 and herself as PW4 who gave their evidence by way of affidavit Ex.PW1/A to Ex.PW4/A. The plaintiff has reiterated the facts of the plaint in his evidence. All witnesses have deposed about the fact that on 03.06.2001 Singh Ram had left away from the house without informing his family members and relatives and since then it was not seen by anybody and his relatives in any place of India and also the said Singh Ram has not been returned in the village and locality and also not attend any function in relation and locality till today.

6. From the above discussion and evidence, it is here by declared that Singh Ram husband of the plaintiff had not seen by any person including the plaintiffs and his relatives since 03.06.2003. Hence, plaintiff is held entitled for his all

property and service benefits. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

Thereafter, the petitioner again approached the authorities on repeated occasions and on 24.10.2013 (Annexure P-5) and the case was, accordingly, processed on 21.12.2013 (Annexure P-6) by the Commandant and sent to the Senior Accounts Officer, Pension Branch. On 10.05.2013 (Annexure P-7) information was asked from the petitioner of various documents and on 05.08.2014 (Annexure P-8). In December, 2014 (Annexure P-9), the Commandant again wrote to the Senior Accounts Officer, Pension, New Delhi regarding the fact that the petitioner was approaching time and again and was facing financial hardship and therefore, some information be given. Eventually, the impugned order dated 27.02.2015 (Annexure P-10) has been passed.

The cumulative factors, as such, would go on to show that there is substance in the argument of the counsel for the petitioner. In the written statement also, it has specifically been mentioned that 3 PWs were present and examined in the criminal case and the material witnesses had been examined and the accused had already been declared Proclaimed Offender. The Public Prosecutor had, thus, closed the evidence and the file was to be restored as and when he surrenders or is arrested by the police and produced in the Court, in view of Section 299 Cr.P.C. Rule 8 of the 1972 Rules which provides regarding the misconduct of the Government employee cannot be, as such, read against the right for family pension which the petitioner would have.

In the peculiar facts and circumstances, as noticed above, the petitioner had lost not only her son on account of the criminal offence which the husband had committed and thereafter, he had gone absconding and her right of family pension was also denied. It is, in such circumstances, the benefit of the Civil Court decree has to be granted to the petitioner. The objection raised that this Court has given a finding, as such, against the petitioner and therefore, it cannot be reopened, is without any basis. This Court had only rejected the claim on the ground that the Writ Court cannot presume that the person is dead. At that point of time, no decree had been passed by the Civil Court. The petitioner had filed the suit and as noticed above, placed sufficient evidence on record to claim that her husband was missing and had not seen the light of the day for the relevant 7 years. In such circumstances, presumption of law has arisen in favour of the petitioner.

In **Indira Vs. Union of India 2005 (3) Civil Court Cases 494**, the Kerala High Court had held that retrospective presumption under Section 108 of the Evidence Act would come into play. In the said case an Army personnel had gone missing and therefore presumption of death was held to be from the date he went missing. Relevant part reads as under:-

“Since petitioner's husband had almost completed his normal tenure by virtue of his serious medical problem, he would have got exemption from two years reserved service, there was no need for his deserting the Army as he was otherwise eligible for release with all the benefits within a couple of months from the alleged date of desertion.

Moreover if he wanted to desert, there was no need for him to report for rejoining duty at Bangalore on 4.10.1995. section 106 of the Army Act of course does not require evidence of any conscious overt act of keeping out of service to declare a missing person a deserter. There may be cases where the missing person may be dead or permanently disabled mentally or physically which may not come to the notice of tile Army or the family. Even in such cases also, the Army may be justified in declaring him a deserter but the position will continue only until expiry of seven years from the date of missing of the person when presumption of death is available under Section 108 of the Evidence Act. Therefore, as and when presumption of death is available under Section 108 of the Evidence Act, the whole position changes and the presumption of death supersedes the declaration of the person a deserter under section 106 of the Army Act. Consequently the family members can claim all benefits as if the man is dead on the date of his missing. Since it is admitted that the petitioner's husband has not surfaced and could not be traced after 5.10.1995 inspire of effort to trace him by the Police at the request of the Army, the presumption of his death as on 5.10.1995 is available under Section 108 of the Evidence Act. Since petitioner's husband was admittedly sick and had undergone major surgery, the possibility of his death could not be ruled out. It is regularly reported in newspapers and media that many dead bodies surfacing here and there are all buried without anybody identifying such bodies. Going by the statement of the respondents petitioner's husband should have been on his way from Bangalore to Military Hospital on the date of missing that is. 5.10.1995. Apart from the presumption of death, the circumstances do not suggest any chance of petitioner's husband deserting the Army towards the end of his career.

In the circumstances, O.P. is disposed of directing the respondents to grant all benefits to the petitioner and other

family members treating as if petitioner's husband Mr. M. Radhakrishnan died in service on 5.10.1995. The respondents shall grant the benefits such as release of retirement benefits, grant of pension, appointment on compassionate grounds etc., within a period of four months from the date of production of copy of this judgment by the petitioner. The petitioner and family members will make required application along with copy of this judgment before the concerned authority for compliance of the judgment without any delay.”

In somewhat similar circumstances, this Court in CWP-4666-2016 titled *Lachhami Devi Vs. Central Warehousing Corporation & others*, also allowed the benefits wherein the husband of the employee had gone missing while working as Chowkidar with the said Corporation. The benefit of retiral dues on 23.03.2004, i.e. the day when the employee went missing was also granted, in the said case. The said judgment would be directly applicable to the facts and circumstances of the present case. However, a condition would necessarily have to be imposed, in the present facts and circumstances that in case the petitioner's husband is traced or arrested and produced in Court, the benefit, as such, of presumption, would no longer survive. Any observations made herein also would not affect the orders passed by the Criminal Court whereby he has been declared proclaimed offender.

Resultantly, in view of the above discussion, the present writ petition is allowed, the impugned order dated 27.02.2015 (Annexure P-10) is quashed. A Writ of Mandamus is issued directing the respondents to process the case of the petitioner for family pension. In

case the husband of the petitioner had been paid pension till specific date, then the family pension would accrue a month thereafter, when the payment had been received. The arrears, as such, be paid within a period of 3 months from the receipt of a certified copy of this order. Petitioner shall also be entitled for the benefit of interest @ 7% per annum on the amount of arrears.

03.07.2019	(G.S. SANDHAWALIA)
Sailesh	JUDGE
Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No